

STATE OF MICHIGAN
COURT OF APPEALS

ERIC DARCEL JONES,

Plaintiff-Appellant/Cross-
Appellees,

v

BEACON HARBOR HOMES, INC.,

Defendant-Appellee/Cross-
Appellant.

UNPUBLISHED

March 1, 2011

No. 293789

Saginaw Circuit Court

LC No. 07-066147-NZ

ERIC DARCEL JONES,

Plaintiff-Appellee,

v

BEACON HARBOR HOMES, INC.,

Defendant-Appellant.

No. 294550

Saginaw Circuit Court

LC No. 07-066147-NZ

Before: HOEKSTRA, P.J., and FITZGERALD and BECKERING, JJ.

FITZGERALD, J. (*concurring*).

I concur in the majority's conclusion that plaintiff's claim for a public policy violation was frivolous in light of established caselaw holding that an employer is not prohibited by statute or public policy from discharging an employee who it anticipates may file a claim for worker's compensation benefits. *Griffey v Prestige Stamping, Inc*, 189 Mich App 665, 666-669; 473 NW2d 790 (1991); *Ashworth v Jefferson Screw Prod, Inc*, 176 Mich App 737, 745-746; 440 NW2d 101 (1989). I also concur in the conclusion that defendant is entitled to appropriate sanctions. I write separately, however, to emphasize that, under the circumstances of this case, any attorney fees and costs resulting from the inclusion of the public policy violation claim in the complaint are minimal at best.

Plaintiff's complaint contained a claim under the Persons with Disabilities Civil Rights Act (PWDCRA), MCL 37.1101 et seq., and a claim for a public policy violation. On September

24, 2008, defendant's counsel sent a letter to plaintiff's counsel seeking plaintiff's concurrence in dismissal of both the claim under the PWDCRA, MCL 37.1101 *et seq.*, and the claim for a public policy violation. In part, the letter stated:

Mr. Jones' claim for violation of the *Michigan Persons with Disabilities Civil Rights Act* fails because Mr. Jones cannot establish a *prima facie* case because he cannot show he was disabled. Temporary impairments do not constitute a disability under the Act. Moreover, Beacon Harbor Homes, Inc., has a legitimate non-discriminatory business reason for terminating Mr. Jones' employment, and Mr. Jones cannot establish pretext. Count II also fails because the law does not recognize a cause of action for violation of public policy based upon termination in anticipation of a worker's compensation claim. *Ashworth v Jefferson Screw Products*, 176 Mich App 737 (1989).

If you do not concur in the dismissal of Plaintiff's claims in their entirety, the request for relief will include a request for attorney fees and costs incurred in seeking the order of dismissal.

On September 26, 2008, defendant filed a motion for summary disposition consistent with the analysis set forth in the September 24, 2008, letter to plaintiff's counsel.

Plaintiff acknowledged in his brief in response to defendant's motion for summary disposition that "the facts and evidence, as they further developed during the course of discovery, [are] insufficient to support a triable public policy retaliation cause of action arising from a worker's compensation claim." Plaintiff stipulated to an order on dismissing the public policy violation claim at the October 27, 2008, hearing on the motion for summary disposition. The hearing was continued to August 5, 2009, with regard to the PWDCRA claim.

In arguing that the trial court erred by denying defendant's motion for sanctions, defendant stresses the fact that it gave plaintiff the opportunity, by way of its September 24, 2008, letter, to concur in the dismissal of the complaint without fear of sanctions. However, a review of the letter reveals that defendant sought plaintiff's concurrence in dismissal of the complaint *in its entirety*, not just dismissal of the public policy claim. As the majority notes, however, the nature and severity of plaintiff's back condition was arguably in dispute. Plaintiff was therefore justified in refusing to concur in dismissal of the entire complaint. However, in response to defendant's motion for summary disposition, which was filed only *two* days after defense counsel's letter to plaintiff's counsel, plaintiff acknowledged that the facts as developed during the course of discovery did not support the public policy violation claim and stipulated to dismissal of the claim. The hearing continued, however, on defendant's motion for summary disposition with regard to only the PWDCRA claim – a claim that the majority has determined was not devoid of arguable legal merit and therefore not frivolous.

/s/ E. Thomas Fitzgerald